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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/494,107	01/28/00	LEE I	AD6430 US CI

IM22/0503

Kevin S Dobson
E. I. du Pont de Nemours and Company
Legal - Patents
1007 Market Street
Wilmington DE 19898

EXAMINER	
MULLIS,J	
ART UNIT	PAPER NUMBER
1711	7

DATE MAILED: 05/03/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.	Applicant(s)
09/494,107	Lee et al
Examiner	**Art Unit**
Jeffrey Mullis	1711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *three* MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *Mar 16, 2001* .

2a) ☐ This action is **FINAL.** 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1-22* is/are pending in the application.

4a) Of the above, claim(s) *22* is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1-21* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☐ All b) ☐ Some* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____ .
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) ☒ Notice of References Cited (PTO-892)

16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). *4*

18) ☐ Interview Summary (PTO-413) Paper No(s). _____

19) ☐ Notice of Informal Patent Application (PTO-152)

20) ☐ Other:

Applicant's election of Group I in Paper No. 6 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 1-21 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention.

The term "rapid" renders the claims unclear in that this term is relative and subjective.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.

Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-21 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Lee et al. (WO 97/27259).

Lee et al. disclose a laminated film containing at least two layers (page 5 lines 15-20) which are adhered together by applicants' specific adhesive at page 4 line 18 - page 5 line 14. Note the example on page 13 where the adhesive is used to adhere an EVOH layer to a HDPE layer. Note that the film was run at a rate of 4.3-4.6 meters per minute in the example on page 13 and therefore could reasonably be said to be rapid but in any case applicants have presented no proof that the speed of the fabrication process has any effect on the claimed article.

Product-by-process claims are not rejected using the approach set out in Graham v. Deere. It is applicant's burden to show that there is a non-obvious difference between the product of a product-by-process claim and a prior art product which reasonably appears to be the same or only slightly different whether or not the prior art product is produced in the same manner as the claimed product. Note In re Marosi, 218 USPQ 289, 292-293 (CAFC 1983); In re Brown, 173 USPQ 685 (CCPA 1972) and In re Thorpe, 227 USPQ 964 (CAFC 1985) in this regard.

In a Continuation-in-Part (CIP), a foreign priority more than one year before the CIP becomes a valid reference under 35

U.S.C. § 102(b). Note in this regard In re Ruscetta and Jenny, 118 USPQ 101 (CCPA 1958) and In re Lukach, Olson and Spurlin, 169 USPQ 795 (CCPA 1971) and In re Hafner, 161 USPQ 783 (CCPA 1969) in this regard.

Claims 1-21 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hughes (USP 5,346,963) in view of McCormack (USP 6,075,179).

Hughes et al. discloses graft modified substantially linear ethylene polymers which meet the limitations of the instant invention component (b) of claim 1. Hughes et al. teaches that the substantially linear polyethylenes are grafted with maleic anhydride etc. at column 3 lines 41-57. Adhesive blends with additional polymers are suggested in column 5 such as HDPE, LLDPE and LDPE where the amount of graft modified polymer is preferably within the range of 5 to about 30 weight percent (column 5 lines 55-64). Multilayer articles comprising a layer of the adhesive blend are also disclosed at column 6 lines 12-22.

Hughes et al. discloses no specific examples in which a combination of the substantially linear polyethylene described by Hughes are present with the conventional polyethylene and which is furthermore used to laminate films.

It would have been obvious to a practitioner having ordinary skill in the art at the time of the invention to laminate EVOH

and ethylene polymer films using the adhesive of Hughes and to add conventional ethylene polymers to the adhesive since Hughes specifically discloses that this may be done and in the expectation of adequate results absent any showing of surprising or unexpected results.

Hughes does not disclose fabrication using the specific line speeds of the dependent claims and arguably Hughes may not disclose rapid film fabrication. Also Hughes discloses no air gap variation.

McCormack discloses that films may be laminated using a line sped of 152 meters per minute and an air gap of 53 centimeters at column 10 lines 3-38.

It would have been obvious to a practitioner having ordinary skill in the art at the time of the invention to laminate the films of the primary reference using a line speed of 152 meters per minute and an air of 53 centimeters as taught by the secondary reference since this would have the advantage of increased speed as compared to that disclosed in the primary reference absent any showing of surprising or unexpected results.

Claims 1-21 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Lee et al., WO 97/27259, cited above in view of McCormack et al., also cited above and optionally Obijeski et al. (USP 5,674,342).

Arguably, Lee's fabrication speeds are not rapid as intended by the instant claims and Lee discloses no specific line speeds or air gaps.

It would have been obvious to a practitioner having ordinary skill in the art at the time of the invention to form the laminate of Lee et al. using the line speeds and air gap of the secondary reference since the use of the secondary reference process in the process of the primary reference to form laminates would have the advantage of increased production speeds and therefore reduce costs absent any showing of surprising or unexpected results.

Obijeski et al. disclose a composition containing a combination of SLEP and conventional polyolefin which may be used to form a laminate and which may be used at rapid line speeds at column 4 lines 35-40. Note column 13 lines 1-45 also where it is disclosed that grafting may take place.

It would have been obvious to a practitioner having ordinary skill in the art at the time of the invention to use the line speeds of Obijeski et al. in the process of the primary reference motivated to increase the efficiency of the process of the primary reference absent any showing of surprising or unexpected results.

Any inquiry concerning this communication should be directed to Jeffrey Mullis at telephone number (703) 308-2820.

J. Mullis:cdc

April 26, 2001

JEFFREY C. MULLIS
PRIMARY EXAMINER
GROUP ~~1200~~ 1711